

1 UNITED STATES DISTRICT COURT  
2  
3 THE HON. PHILIP M. PRO, U.S. DISTRICT JUDGE PRESIDING  
4  
5 UNITED STATES OF AMERICA, )  
6 Plaintiff, ) Case No. 2:10-cr-578-PMP-GWF  
7 vs. ) Change of Plea Hearing  
8 LINDA LIVOLSI and ) Courtroom 4B  
9 WILLIAM LIVOLSI, JR., )  
0 Defendants. )  
0 ) C E R T I F I E D C O P Y

## TRANSCRIPT OF PROCEEDINGS

Wednesday, October 15, 2014; at 10:07:18 a.m.

APPEARANCES: See Next Page

DIGITALLY RECORDED: FTR, 10:07:18 a.m.

TRANSCRIBED BY: HEATHER K. NEWMAN  
(702) 464-5828

25 Proceedings recorded by electronic sound recording, transcript produced by mechanical stenography and computer.

1       APPEARANCES:

2       For the Plaintiff:

3              UNITED STATES ATTORNEY  
4              BY: J. GREGORY DAMM  
5              333 South Las Vegas Boulevard, Suite 5000  
6              Las Vegas, NV 89101  
7              (702) 388-6336

8       For Defendant Linda Livolsi:

9              FEDERAL PUBLIC DEFENDER  
10          BY: MONIQUE N. KIRTLEY  
11          NISHA BROOKS-WHITTINGTON  
12          411 East Bonneville, Suite 250  
13          Las Vegas, NV 89101  
14          (702) 388-6577

15       For Defendant William Livolsi, Jr.:

16              HUNTERTON & ASSOCIATES  
17          BY: C. STANLEY HUNTERTON  
18          627 South Seventh Street  
19          Las Vegas, NV 89101  
20          (702) 388-0098

21

22

23

24

25

1 LAS VEGAS, NEVADA; WEDNESDAY, OCTOBER 15, 2014; AT 10:07 A.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Good morning everybody. Have a seat,  
7 please.

8 All right. We are convened in CS-10-578, United  
9 States of America vs. Linda and William Livolsi. The record  
10 should reflect the presence of Ms. Livolsi, together with  
11 counsel Monique Kirtley and, Mr. William Livolsi is present  
12 with counsel Mr. Stanley Hunterton. On behalf of plaintiff,  
13 United States, Mr. Gregg Damm is present. We also have  
14 Nisha Brooks-Whittington with Ms. Livolsi and, of course, both  
15 defendants.

16 I've been provided with Plea Agreement memoranda that  
17 provide for resolution of the case against Ms. Livolsi based on  
18 her entry of plea to two charges, the charges in Counts Two and  
19 Four of the Superseding Indictment in this case, Count Two  
20 charging Wire Fraud, violation of 18, U.S. Code, Section 1343,  
21 and Count Four, False and Fraudulent Tax Returns in violation  
22 of 26, U.S. Code, Section 7206, Subsection 1, I believe that's  
23 for the calendar tax year 2004 as I recall from the Indictment.

24 In Mr. Livolsi's case, his agreement is a little bit  
25 different in that he would be entering a plea only as to the

1 charge of Wire Fraud in Count Two in violation of 18, U.S.  
2 Code, Section 1343.

3 Are the parties ready to proceed with their entries  
4 of plea at this point?

5 MR. HUNTERTON: Yes, Judge.

6 MS. KIRTLLEY: Yes, Your Honor.

7 THE COURT: All right. I'd ask Ms. Livolsi, you and  
8 Mr. Livolsi, you both stand and raise your right hands and the  
9 clerk will administer the oath to you to respond to my  
10 questions truthfully.

11 COURTROOM ADMINISTRATOR: Do you solemnly swear that  
12 the testimony you're about to give in the matter now before  
13 this Court will be the truth, the whole truth, and nothing but  
14 the truth, so help you God?

15 MR. WILLIAM LIVOLSI, JR.: I do.

16 MS. LINDA LIVOLSI: I do.

17 THE COURT: All right. You can both remain seated so  
18 we can pick you up on the microphones right there and, we'll  
19 begin. While the questions I'm going to ask you are very  
20 similar, some of them are individualized and so I'll direct  
21 them to you either individually or collectively but first of  
22 all, Ms. Livolsi, is Linda Livolsi your true name?

23 MS. LINDA LIVOLSI: Yes.

24 THE COURT: And how old are you?

25 MS. LINDA LIVOLSI: 46.

1                   THE COURT: And how far did you go in school?

2                   MS. LINDA LIVOLSI: Pardon me?

3                   THE COURT: How far did you go in school? How many  
4 years of school did you have? High school? College?

5                   MS. LINDA LIVOLSI: I graduated from college in 1990.

6                   THE COURT: All right. Ms. Livolsi, are you at this  
7 time under the care of a physician or a psychiatrist? Now, I  
8 know the answer to this question --

9                   MS. LINDA LIVOLSI: Several of them, yes.

10                  THE COURT: Yeah.

11                  You obviously have been in the record in this case,  
12 there's a lot of medical treatment. At this time are you under  
13 or are you taking any medications that are prescribed by your  
14 doctors?

15                  MS. LINDA LIVOLSI: Yes.

16                  THE COURT: And what kinds of medications are you  
17 taking?

18                  MS. LINDA LIVOLSI: Strong painkillers to, umm,  
19 anxiety meds, rheumatology medicine, antibiotics, numerous  
20 meds.

21                  THE COURT: All right. And with regard to the pain  
22 medication, did you take those today?

23                  MS. LINDA LIVOLSI: Yes.

24                  THE COURT: Do you know what kind of pain medication  
25 it is, what's it called?

1 MS. LINDA LIVOLSI: Yes. OxyContin and Oxycodone.

2 THE COURT: All right. Do those medications  
3 interfere in any way with your ability to understand what I'm  
4 saying to you here today in court or to discuss your case with  
5 your attorneys?

6 MS. LINDA LIVOLSI: No.

7 THE COURT: And, Ms. Kirtley and  
8 Ms. Brooks-Whittington, have you noted any difficulties in  
9 communication, being understood with Ms. Livolsi, either today  
10 or previous to today in discussing the Plea Agreement in this  
11 case?

12 MS. KIRTLEY: No, Your Honor.

13 MS. BROOKS-WHITTINGTON: No, Your Honor.

14 THE COURT: All right.

15 And, Mr. Livolsi, let me ask you, is William Livolsi,  
16 Jr. your true name, sir?

17 MR. WILLIAM LIVOLSI, JR.: Yes.

18 THE COURT: And how old are you?

19 MR. WILLIAM LIVOLSI, JR.: I'm 55.

20 THE COURT: And how far did you go in school?

21 MR. WILLIAM LIVOLSI, JR.: I graduated college.

22 THE COURT: Okay.

23 MR. WILLIAM LIVOLSI, JR.: In 1983.

24 THE COURT: Are you at this time under the care of a  
25 physician or a psychiatrist for any reason?

1                   MR. WILLIAM LIVOLSI, JR.: I do see a psychiatrist,  
2 yes.

3                   THE COURT: Are you taking any medications prescribed  
4 by that doctor?

5                   MR. WILLIAM LIVOLSI, JR.: I am.

6                   THE COURT: What kind of medication?

7                   MR. WILLIAM LIVOLSI, JR.: I take antianxiety  
8 medication as well as antidepressant medicine.

9                   THE COURT: All right. Do those medications in any  
10 way interfere with your ability to understand what I'm saying  
11 here today?

12                  MR. WILLIAM LIVOLSI, JR.: No.

13                  THE COURT: And, do they interfere with your ability  
14 to communicate and to understand your attorney, Mr. Hunterton?

15                  MR. WILLIAM LIVOLSI, JR.: No, it does not.

16                  THE COURT: Mr. Hunterton, do you agree with that;  
17 have you had any difficulties in either understanding your  
18 client or making yourself understood to him in connection with  
19 this case and particularly in connection with today's  
20 proceedings and the Plea Agreement?

21                  MR. HUNTERTON: I agree with my client's statement  
22 and I have had no such difficulties.

23                  THE COURT: All right. Thank you.

24                  Now, do both defendants waive the formal reading of  
25 the respective counts of the Superseding Indictment?

1 MS. KIRTLEY: Yes, Your Honor.

2 MR. HUNTERTON: Yes.

3 THE COURT: The Plea Agreements that have been  
4 submitted, I want to make sure that both of you have had a full  
5 opportunity to read those Plea Agreements.

6 Ms. Livolsi, have you read the Plea Agreement that  
7 applies in your case before you signed it?

8 MS. LINDA LIVOLSI: Yes.

9 THE COURT: And before you signed that document, did  
10 you have an opportunity to discuss the contents of the  
11 Plea Agreement fully with your attorneys?

12 MS. LINDA LIVOLSI: Yes.

13 THE COURT: You could ask them questions and they  
14 could give you their legal advice; is that correct?

15 MS. LINDA LIVOLSI: Yes.

16 THE COURT: All right. And does the Plea Agreement,  
17 as far as you understand it, include all of the agreements  
18 between you, through your attorneys, and the Government? In  
19 other words, is there any agreement that's not contained in the  
20 Plea Agreement?

21 MS. LINDA LIVOLSI: Not that I'm aware of.

22 THE COURT: All right.

23 Mr. Livolsi, same questions to you. Did you have the  
24 opportunity -- or have you had the opportunity to read the  
25 Plea Agreement that applies in your case?

1                   MR. WILLIAM LIVOLSI, JR.: I have.

2                   THE COURT: And before you signed that agreement, did  
3 you have the opportunity to discuss it fully with your  
4 attorney, Mr. Hunterton?

5                   MR. WILLIAM LIVOLSI, JR.: I did.

6                   THE COURT: And are there any side agreements, other  
7 agreements that are not encompassed within the written  
8 Plea Agreement?

9                   MR. WILLIAM LIVOLSI, JR.: No. No, sir.

10                  THE COURT: And, Mr. Damm, let me ask you, have there  
11 been any previous tenders of a Plea Agreement that were more  
12 beneficial to either defendant than the current Plea Agreement?

13                  MR. DAMM: Your Honor, that -- that's a little bit  
14 hard for me to say because I was not the first attorney  
15 handling this case.

16                  THE COURT: Right, Mr. Chu was.

17                  MR. DAMM: Mr. Chu had the case initially.

18                  THE COURT: Yeah.

19                  MR. DAMM: And originally only Linda Livolsi was  
20 charged.

21                  THE COURT: Correct.

22                  MR. DAMM: And, I'm sure Mr. Chu would have been  
23 receptive to a settlement with her based upon the original  
24 Indictment. However, there was no such agreement ever reached  
25 and there was therefore the Superseding Indictment which is, of

1 course, less favorable to Mr. Livolsi.

2 THE COURT: Yeah. Since the return of the  
3 Superseding Indictment in January of this year have there been  
4 any prior offers by the Government that would in your view be  
5 more beneficial to either Ms. Livolsi or Mr. Livolsi?

6 MR. DAMM: No, unfortunately.

7 THE COURT: And, Ms. Kirtley, I realize you weren't  
8 the original attorney for Ms. Livolsi but -- at least I don't  
9 think you were.

10 MS. KIRTELEY: No, I was not, Your Honor.

11 THE COURT: But, since the return of the  
12 Superseding Indictment in January -- in January of this year,  
13 have there been any more lenient Plea Agreements offered by the  
14 Government?

15 MS. KIRTELEY: No, there hasn't, Your Honor.

16 THE COURT: And Ms. Livolsi, have you understood  
17 there were any such more beneficial Plea Agreements to you  
18 offered by the Government in the past 10 months?

19 MS. LINDA LIVOLSI: No.

20 THE COURT: And, Mr. Livolsi and Mr. Hunterton, the  
21 same questions. Are you -- either of you aware of any previous  
22 offers of a resolution by plea which you would deem more  
23 beneficial than the one being offered today?

24 MR. HUNTERTON: No, there have not been.

25 MR. WILLIAM LIVOLSI, JR.: No, sir.

1                   THE COURT: Okay. There are a number of questions  
2 then that I must ask each of you but, the first thing I want to  
3 do is to call upon Government counsel to briefly summarize the  
4 Plea Agreements. Now, you've told me that you both read them,  
5 you've talked to your attorneys about them. They contain a lot  
6 of provisions, some of which may not seem particularly  
7 significant and indeed they may not be in your particular case  
8 but, I want the Government to summarize the Plea Agreement as  
9 to each of you and then I'll come back and ask you and your  
10 attorneys whether they agree with that summary.

11                  Mr. Damm.

12                  MR. DAMM: Yes, thank you, Your Honor.

13                  Your Honor, starting first with Mrs. Livolsi and I'll  
14 go through the sections, I'll refer to both defendants if there  
15 are any differences rather than go through each  
16 Plea Agreement --

17                  THE COURT: That's -- that's a good idea. Certainly  
18 as to the pertinent form charge, it would be the same, the  
19 additive would be the specific tax count as to Ms. Livolsi.

20                  MR. DAMM: Correct, Your Honor.

21                  With respect to both of the defendants, the  
22 Plea Agreement outlines the scope of the agreement, that being  
23 between the United States and the individual defendants and,  
24 the Plea Agreements indicate that these Plea Agreements bind  
25 the defendant and the United States Attorney's Office for the

1 District of Nevada, but they do not bind any other prosecuting,  
2 administrative, or regulatory authority of the United States,  
3 Probation, or this Court.

4 The Plea Agreements both set forth the parties'  
5 agreement regarding the criminal charges referenced in the  
6 Plea Agreement and applicable sentences, fines, restitution,  
7 and forfeiture.

8 The Plea Agreement does not control or prohibit the  
9 United States or any agency or third party from seeking any  
10 other civil or administrative remedies, directly or indirectly,  
11 against the defendants.

12 With respect to the disposition of charges, with  
13 respect to Ms. Livolsi, the -- Ms. Livolsi agrees to plead  
14 guilty to Count Two, Wire Fraud, in violation of Title 18,  
15 United States Code, Section 1343 and to Count Four, as the  
16 Court has indicated, to False and Fraudulent Tax Returns in  
17 violation of 26, United States Code, Section 7206(1) for the  
18 2004 tax year.

19 The defendant also agrees -- or both defendants do --  
20 agree to the forfeiture of the property set forth in the  
21 forfeiture allegations of the Indictment.

22 Now there has been a little discussion between myself  
23 and counsel for Ms. Livolsi. They seem to object to the in  
24 personam nature of the proposed forfeiture order but I would  
25 point out to the Court and to defense counsel, to the language

1       in the forfeiture allegation in the Superseding Indictment.  
2       This is Document No. 110, at the page of -- at the top of Page  
3       9, clearly indicates that the defendants' -- the forfeiture  
4       allegation as to both defendants is an in personam criminal  
5       forfeiture money judgment up to 5,015,000 dollars in United  
6       States currency.

7                  THE COURT: Let me ask, are any of those proceeds  
8       that are being sought for forfeiture actually tangible assets  
9       that are located at this point?

10                 MR. DAMM: There is a business, Your Honor, that --

11                 THE COURT: Right.

12                 MR. DAMM: -- that the defendants apparently owned at  
13       one time. I'm not sure what the status is of that business.

14                 THE COURT: There's not 5-plus million in some bank  
15       account somewhere, in other words?

16                 MR. DAMM: No, not -- not that we're aware of,  
17       Your Honor.

18                 THE COURT: All right. All right.

19                 Let me interrupt then and, Ms. Kirtley, it appears it  
20       was you that had the issue. Go ahead and tell me what --

21                 MS. KIRTELLEY: Yes, Your Honor.

22                 I'm not sure what business the Government is talking  
23       about. If they're talking about the restaurant, that  
24       restaurant no longer exists. That restaurant burnt down awhile  
25       back -- oh, there was a fire in the restaurant.

1 MS. LINDA LIVOLSI: No.

2 MS. KIRTLEY: Okay.

3 THE COURT: Well, certainly, the Government, if it's  
4 forfeiting proceedings, would like --

5 MS. KIRTLEY: Right.

6 THE COURT: -- resources or assets wherever it could  
7 find them.

8 MS. KIRTLEY: Right. This -- when the Government  
9 presented to me the Order of Forfeiture and the language in the  
10 Order of Forfeiture says that Linda Grogg agreed to the  
11 forfeiture of the in personam criminal forfeiture money  
12 judgment as set forth in the Plea Agreement. Now, when I look  
13 at the language in the Plea Agreement, it doesn't say "in  
14 personam" and I just want the language to match. The  
15 Government told me it means the same thing. And I asked the  
16 Government, well, if it means the same thing, then have the  
17 language match as it matches in the Plea Agreement and take out  
18 the in personam. And that, I think, was the basic request or  
19 question for the Government.

20 THE COURT: But the Indictment, the  
21 Superseding Indictment does contain the reference --

22 MS. KIRTLEY: The Indictment does, but I just wanted  
23 the Order of Forfeiture to match the language that's in the  
24 Plea Agreement, because the Order of Forfeiture goes back to  
25 the Plea Agreement and it says in the Plea Agreement,

1 Forfeiture, in personam forfeiture but the Plea Agreement does  
2 not say in personam forfeiture. If -- and the Government's  
3 telling me it means the same thing, then have the -- each  
4 language match. If the Order of Forfeiture --

5 THE COURT: Well, you're saying that we need to  
6 change the Plea Agreement to provide that it's in personam --

7 MS. KIRTLEY: Or he can change the Order of  
8 Forfeiture and have it match because he refers to the  
9 Plea Agreement in the Order of Forfeiture.

10 THE COURT: Right, okay.

11 MS. KIRTLEY: I mean, so just have it just match. If  
12 it means the same thing, then just have the language match.

13 THE COURT: How do you propose we resolve that?

14 MR. HUNTERTON: Your Honor --

15 THE COURT: Yeah, Mr. Hunterton.

16 MR. HUNTERTON: I'd like -- I'd like to join in that  
17 objection. I think the Order of Forfeiture is inappropriate  
18 with the phrase "in personam" in it for the reasons suggested  
19 by Ms. Kirtley. It's not in the Plea Agreement and secondly,  
20 as Your Honor well knows, forfeiture proceedings by the  
21 Government may go on for years and years and I don't think that  
22 the Livolsis ought to be subject to having their home proceeded  
23 against or any after-acquired property. I think Your Honor's  
24 question was right on point, if there are 5 million dollars  
25 sitting in a joint husband and wife bank account under the name

1 William and Linda Livolsi, that might be appropriate and it  
2 might have been appropriate to have them plea to that kind of  
3 personal forfeiture, but as we all know, forfeiture is an in  
4 rem proceeding.

5 THE COURT: Right.

6 MR. HUNTERTON: And the Government's entitled to go  
7 after either the 5 million cash or to real or personal property  
8 that they can trace it to. What they are not entitled to is to  
9 go after the Livolsis' personal property for the rest of their  
10 lives that had nothing to do with the crimes.

11 THE COURT: Doesn't the Plea Agreement contemplate  
12 restitution as well?

13 MS. KIRTLLEY: Yes, it does, Your Honor.

14 THE COURT: And, restitution of approximately the  
15 same amount?

16 MS. KIRTLLEY: 5 million for the wire fraud and a  
17 million for --

18 THE COURT: 1 million on the -- something on the tax?

19 MS. KIRTLLEY: Taxes, that's correct.

20 THE COURT: So, Mr. Damm, as I understand it, the --  
21 and obviously we've gone round and round and the circuit writes  
22 to this all the time, the issue relating to double penalty,  
23 restitution order and forfeiture, you collect twice.

24 Isn't the attempt or the interest of the Government  
25 in recovering the restitution, the amount of money to address

1 any victims accomplished through the restitution, which would  
2 be something for which joint and several liability would apply  
3 to the defendants, as opposed to the forfeiture being in  
4 personam versus in rem?

5 MR. DAMM: The Government, as I understand it,  
6 Your Honor, has -- has two interests, which are clearly  
7 delineated in the Plea Agreement; one is the in personam  
8 forfeiture judgment, which is designed to remove or to -- to  
9 address the criminal proceeds that the defendants received and,  
10 the restitution, which is designed to make the victim whole.  
11 They're two separate interests and --

12 THE COURT: So 5 million obligation, the Government  
13 would be able to collect 10 million, in essence?

14 MR. DAMM: That's what the law appears to provide  
15 for, Your Honor.

16 THE COURT: Um-hum.

17 MR. DAMM: And -- and that's -- that's what the  
18 Ninth Circuit has indicated.

19 THE COURT: Okay.

20 MR. DAMM: And that's -- the Plea Agreement, in my  
21 opinion, is clear and unambiguous. As I've indicated, if we  
22 looked at Page 2 of the Plea Agreement, Line 13, it says, "The  
23 defendant also agrees to the forfeiture of the property set  
24 forth in the forfeiture allegations of the Indictment." So the  
25 Plea Agreement refers, as it should, necessarily, to the

1 Indictment and the Indictment clearly indicates an in personam  
2 judgment of 5,015,000 dollars.

3 THE COURT: Why doesn't the Plea Agreement articulate  
4 that same language that's in the Indictment at Page 9 -- Page 8  
5 and 9 -- Page 8 and 9 . . . well, it's a very, very long  
6 sentence, Paragraph 2, beginning on Page 8, "Upon conviction of  
7 the felony offenses in Counts One and Two, defendants shall  
8 forfeit to the United States any property which constitutes or  
9 is derived from proceeds traceable to the violations an in  
10 personam criminal forfeiture money judgment up to 5,015,000  
11 dollars" -- it's kind of a confusing -- such offense an in  
12 personam -- should that have been an in personam?

13 MR. DAMM: Your Honor, I -- I would have to defer to  
14 someone from my -- our asset forfeiture section.

15 THE COURT: Well, otherwise what I'm hearing is we  
16 don't have an agreement.

17 MR. DAMM: Well it sounds that way to me, Your Honor.

18 THE COURT: Because the -- the defendants are not  
19 agreeing to a forfeiture which contains the reference to in  
20 personam forfeiture as opposed to against the property in rem,  
21 and the Government is not agreeing to do otherwise then.

22 MR. DAMM: Your Honor, I'm not at liberty, as I stand  
23 here today, to relinquish what we agreed to in the  
24 Plea Agreement. Now, perhaps upon consultation with others in  
25 my office there may be some different resolution but, but as I

1 read the Plea Agreement, it's clear and unambiguous and I'm  
2 really kind of astounded at the objection.

3 THE COURT: Well, the language does, at Page 2 of the  
4 agreement, Lines 13, 14, the defendant also agrees to the  
5 forfeiture of the property set forth in the forfeiture  
6 allegations of the Indictment, which do contain the reference  
7 to in personam. You know, at the end of the day, it just --  
8 it's inconceivable to me that it makes . . . Well, it could  
9 make a difference as Mr. Hunterton points out. We have seen  
10 examples of that.

11 The way I read the Plea Agreement, Ms. Kirtley, and  
12 Mr. Hunterton, it does invoke the Indictment, in other words, I  
13 don't see that it's inconsistent. True, the Plea Agreement  
14 doesn't utter the talismanic phrase "in personam," but it  
15 incorporates or references the allegations in the Indictment  
16 which do contain that reference. So it seems to me that's what  
17 the agreement says, what I'm hearing now is that's not what  
18 defendants thought it said and they don't agree to that. And,  
19 so, if that's a deal breaker, then I guess -- you know, we  
20 don't have a meeting of the minds, then we can't have an  
21 agreement that resolves the case. We'd have to just resolve it  
22 at trial. I think that's awfully unfortunate but . . .

23 MR. HUNTERTON: Your Honor . . .

24 THE COURT: Yes.

25 MR. HUNTERTON: I think the dynamic of the problem

1 here this morning is that the Plea Agreement didn't say in  
2 personam.

3 THE COURT: Right, but it references the Indictment  
4 that does.

5 MR. HUNTERTON: If it had said in personam, I would  
6 have had a specific discussion with Mr. Livolsi --

7 THE COURT: Sure.

8 MR. HUNTERTON: -- about the implication or  
9 non-implications of that.

10 THE COURT: Yeah.

11 MR. HUNTERTON: I didn't have that conversation --

12 THE COURT: Yeah.

13 MR. HUNTERTON: -- because it was 25 minutes ago that  
14 we first saw this language.

15 Now, I have agreed on behalf of a lot of clients to  
16 forfeiture.

17 THE COURT: Yeah.

18 MR. HUNTERTON: And I have had pursued some people.

19 THE COURT: I'm sure you have, yeah.

20 MR. HUNTERTON: And, maybe I'm forgetting but, I  
21 don't ever remember seeing the phrase "in personam" in the  
22 Order of Forfeiture and that's what concerns me. Is it a deal  
23 breaker? I've got to say in all candor to the Court, it should  
24 not be.

25 THE COURT: Yeah.

1                   MR. HUNTERTON: I think the problem is that we were  
2 caught by surprise with this and perhaps the appropriate  
3 resolution that -- now that the cards are on the table, is for  
4 Mr. Damm to adjourn to his office and see if he can get  
5 authority to take that out and we --

6                   THE COURT: And you and your clients talk about --

7                   MR. HUNTERTON: And our clients talk about whether it  
8 makes any difference.

9                   THE COURT: Well, let's -- let's take some time to do  
10 just that, because you need to talk to your clients about it,  
11 obviously. And Mr. Damm, you said . . . Well, I don't recall,  
12 I see a million forfeiture orders and I --

13                  MR. DAMM: Our -- our concern, Your Honor, is this  
14 put very simply: The realistic possibility of the defendants  
15 ever making 5 million dollars worth of restitution --

16                  THE COURT: Very nil.

17                  MR. DAMM: Is nil. If they happen to win the  
18 lottery, as one of the victims did in this case, and they  
19 receive 30 million dollars, then the Government certainly would  
20 like to be able to pursue the forfeiture judgment against them  
21 for --

22                  THE COURT: For 5 million.

23                  MR. DAMM: -- for 5 million dollars.

24                  THE COURT: Right.

25                  MR. DAMM: That's the -- that's really kind of the

1 long and the short of it. And, I'm reluctant to relinquish  
2 that . . . that remedy that the Government has. And I can --  
3 I -- I recall a specific case, the Samuel Davis case where the  
4 Ninth Circuit just very recently discussed both the . . . the  
5 aspect of restitution and forfeiture.

6 THE COURT: Yeah.

7 MR. DAMM: And how they're all, in fact, different  
8 remedies and they're not -- it's not double counting.

9 THE COURT: I -- I've read those same cases. There's  
10 more than one subject on that case. No, I agree with you and  
11 the -- the Plea Agreement does say what you just said it says,  
12 that is, it does invoke the Indictment which does contain that  
13 language. That's the way it's charged. That's the way the  
14 Plea Agreement reads. I can understand if defendants have a  
15 misunderstanding of that and I certainly agree with  
16 Mr. Hunterton that he needs to talk to Mr. Livolsi,  
17 Ms. Kirtley, you need to talk -- and Ms. Brooks-Whittington, to  
18 your client, to make sure that they understand that and to make  
19 sure it's not a deal breaker. If it is a deal breaker, then  
20 there's -- your client's not forced to plead guilty obviously.  
21 But if it's not and she understands and he understands the  
22 consequence, then -- the potential consequence -- you can't get  
23 blood out of a stone, we all know that, whether it's in  
24 personam or in rem.

25 MS. KIRTLEY: No, I think they're just worried and

1 Ms. Livolsi is just really worried that at some point when  
2 she's off of supervision, supervised release or if she's off of  
3 probation, the next thing she knows that she's getting an order  
4 to get out of her house because the Government is taking her  
5 house from her. That's all --

6 THE COURT: Well, the lottery example is a good  
7 example.

8 MS. KIRTLEY: But if she never wins the lottery, she  
9 has a house.

10 THE COURT: Yeah.

11 MS. KIRTLEY: And that's one of her concerns is, is  
12 that, okay, I don't have the 5 million dollars, the Court -- my  
13 probation is over with or my supervised release is over with  
14 and now here comes the Government telling me to get out of my  
15 house because I don't have 5 million dollars, they're going to  
16 take substitution of property which is going to be instead of  
17 5 million dollars, they're taking my house and that's one of  
18 the concerns she has.

19 THE COURT: The same with the restitution obviously.

20 MS. KIRTLEY: Right.

21 THE COURT: It's reduced to a civil judgment. It's  
22 just like --

23 MS. KIRTLEY: She can have the 5 --

24 THE COURT: It's like any kind of judgment.

25 MS. KIRTLEY: Well, she can have the 5 million

1 restitution paid off and then she has in personam still hanging  
2 over her head.

3 THE COURT: Okay.

4 MS. KIRTLEY: You know, that could be her house.

5 THE COURT: No, I understand the concern. I -- I do  
6 understand that. And, whether it's a realistic or practical  
7 term, I don't know. I'd rather think it's not but, we have  
8 seen cases, Mr. Hunterton is familiar with one where it goes on  
9 and it can go on. This is not necessarily a case like that.  
10 But if you -- if you need some time to talk to your client  
11 about it, take the time to do that and I'll step out while you  
12 do so.

13 I see no point in sending Mr. Damm back to talk to  
14 the U.S. attorney, we've already got their policy, they've  
15 stated it, so . . . I -- I can take a break, whatever you need.

16 MR. HUNTERTON: Judge, just let me make one  
17 suggestion and I don't have authority from my client, let alone  
18 Mrs. Livolsi, to commit to this but I wanted Your Honor to hear  
19 it so if we can all come to an agreement, we're not then  
20 surprising the Court when you come back.

21 I think that if we could carve out the home, which  
22 was not purchased with the proceeds of the criminal activity,  
23 there's no allegation of that, et cetera, if we could carve out  
24 the problem of the home as raised by Ms. Kirtley, that there  
25 aren't going to be proceedings pursuant to the forfeiture

1 against the home, then there isn't anything else to fight about  
2 and the hypothetical future lottery is like the hypothetical  
3 safe falling on somebody's head; if it happens, it happens.

4 THE COURT: Right, yeah.

5 MR. HUNTERTON: That the hope -- the home is a real  
6 and current issue.

7 THE COURT: Okay. All right.

8 Well, that's something you all could agree to or  
9 not --

10 MR. DAMM: Your Honor, I'm advised by the case agent  
11 by both -- both from the FBI and the IRS that the home was  
12 purchased with fraudulently obtained proceeds from one of the  
13 earlier investors, not the 5 million dollar investigator,  
14 but --

15 THE COURT: So the Government's not in a position to  
16 agree to some kind of carve-out or something?

17 MR. DAMM: No. We -- in addition, I'm also told that  
18 the home is in foreclosure, that the defendants have filed a  
19 bankruptcy petition, so, I -- I'm really at a loss to  
20 understand what they're arguing about.

21 THE COURT: Okay. Well, if they don't have any  
22 equity in the home, if they're in foreclosure, then it's a  
23 rather moot point. The home is illusory but, talk to your  
24 clients and see if you still have a negotiation. If you don't,  
25 then I can't recall the trial date. Eileen, remind me.

1 (Brief pause in proceedings.)

2 Well, you all probably know, what's the . . .

3 MS. KIRTLEY: I believe it's the 21st of this month,  
4 Your Honor.

5 THE COURT: Okay.

6 MS. KIRTLEY: Yeah, it's the 21st.

7 THE COURT: Okay.

8 MS. KIRTLEY: At 9:00 a.m.

9 THE COURT: Well we've got a trial date set then.

10 All right. We'll take -- we'll take a break and my  
11 courtroom deputy will tell me when you all are ready for me to  
12 come back in, either up or down and, you know, I defer to you  
13 on that.

14 MR. HUNTERTON: May we use either the courtroom or  
15 the anteroom?

16 THE COURT: You could use both -- either one, if  
17 you -- as you wish.

18 MR. HUNTERTON: Thank you.

19 THE COURT: We could have Mr. Damm step out --

20 MR. DAMM: We'll step out, Your Honor.

21 THE COURT: Yeah, and so you can just use the  
22 courtroom, stay comfortable there with all your papers.

23 And Eileen, just let me know as soon as they're  
24 ready.

25 And we'll go off the record now so they can . . .

1 (Recess was taken at 10:38:44 a.m.)

2 (Proceedings resumed at 10:56:40 a.m.)

3 COURTROOM ADMINISTRATOR: All rise.

4 THE COURT: That's all right.

5 Okay. The parties have had a few minutes to discuss  
6 the matter of the forfeiture provision and what resolution do  
7 we have? Mr. Hunterton?

8 MR. HUNTERTON: On behalf of William Livolsi we are  
9 going to withdraw our objection to the phrase "in personam" in  
10 the Order of Forfeiture.

11 THE COURT: All right.

12 MS. KIRTLEY: We concur with that, too, Your Honor.

13 THE COURT: All right.

14 I do understand, Ms. Livolsi and Mr. Livolsi, that it  
15 is somewhat confusing, the issue, it seems almost Byzantine in  
16 a sense but as Mr. Damm articulated, they're separate interests  
17 that are being discussed. And I appreciate as well the  
18 impracticality in most cases of recovery of the sums that we're  
19 talking about, once, let alone more than once, so this is  
20 frequently a sticking point in cases in terms of negotiation  
21 and results in a fair amount of confusion, but I think you've  
22 all arrived at sensible resolution so, I'll approve the  
23 forfeiture orders that were submitted.

24 Go ahead with your summary, Mr. Damm. You were  
25 discussing the forfeiture, you may proceed beyond that.

1                   MR. DAMM: Yes, thank you, Your Honor, just to back  
2 up for just a minute.

3                   With respect to defendant Linda Livolsi, she's agreed  
4 to plead guilty to Count Two, the wire fraud count and  
5 Count Four, a -- submitting a false and fraudulent income tax  
6 returns for the 2004 tax year --

7                   THE COURT: Correct.

8                   MR. DAMM: -- as well as forfeiture.

9                   With respect to William Livolsi, he's agreed to plead  
10 guilty to Count Two, the wire fraud count and also agrees to  
11 the forfeiture.

12                  THE COURT: Right.

13                  MR. DAMM: The Plea Agreement goes on to discuss the  
14 waiver of the various rights that the defendants --

15                  THE COURT: Yes, I'll go over those with the  
16 defendants in a minute.

17                  MR. DAMM: That they're giving up.

18                  The Plea Agreements both indicate that the defendants  
19 will not seek to withdraw their guilty pleas after they enter  
20 them in court.

21                  The United States also agrees not to bring any  
22 additional charges against the defendants that culminated in  
23 this Plea Agreement except that the Government reserves the  
24 right to prosecute for any crime of violence which the  
25 defendants may engage in -- which I don't anticipate -- or have

1 engaged in.

2                   The Plea Agreement then discusses the elements of the  
3 offenses. It discusses the elements of Wire Fraud, which are  
4 that defendant knowingly participated in, devised and intended  
5 to devise a plan or scheme to defraud, or a scheme or plan for  
6 obtaining money or property by means of false or fraudulent  
7 pretenses, representations, or promises; secondly, that the  
8 statements made or facts submitted as part of the scheme were  
9 material, that is, they had a natural tendency to influence or  
10 were capable of influencing the person to part with money or  
11 property; third, that defendant acted with the intent to  
12 defraud, that is, the intent to deceive or cheat; and finally,  
13 fourth, that defendant used or caused to be used the wires to  
14 carry out or attempt to carry out an essential part of the  
15 scheme. Those would be elements of Count Two with respect to  
16 Ms. Livolsi and Count Four, the elements are, that defendant  
17 made and signed a tax return for the year 2004 that she knew  
18 contained false and incorrect information as to a material  
19 matter; secondly, that the return contained a written  
20 declaration that it was being signed subject to the penalties  
21 of perjury; and third, that in filing the false tax return, the  
22 defendant acted willfully.

23                   THE COURT: Let me interrupt again for one second.

24                   Ms. Livolsi and Mr. Livolsi, those essential elements, I want  
25 to make sure you understand, those are the things the

1       Government would have to prove by its evidence if your case  
2       went to trial. And, I want to make sure you understand, those  
3       are what they would have to prove to a jury beyond a reasonable  
4       doubt.

5                  Do you understand that as to Count Two, Mr. Livolsi?

6                  MR. WILLIAM LIVOLSI, JR.: I do.

7                  THE COURT: And, Ms. Livolsi, as to Counts Two and  
8       Four, do you understand that?

9                  MS. LINDA LIVOLSI: Yes.

10                 THE COURT: Okay. Go ahead.

11                 MR. DAMM: Thank you, Your Honor.

12                 The next section of the Plea Agreements, Section IV  
13       deal with the facts supporting the guilty pleas, which the  
14       defendants acknowledge that the United States could prove in  
15       the event the matter would go to trial, they also waive any  
16       potential future claim of the facts that they admit to in the  
17       Plea Agreement were insufficient to satisfy the elements of the  
18       charged offenses, and that they both admit and declare under  
19       penalties of perjury the facts set forth in their respective  
20       Plea Agreements are true and correct.

21                 THE COURT: And, Ms. Livolsi, have you read those  
22       factual statements that begin on Page 4 of the Plea Agreement,  
23       Line 13 and they proceed over to Page 19 -- I'm sorry, Page 8,  
24       Line 19, have you read those facts?

25                 MS. LINDA LIVOLSI: Yes.

1                   THE COURT: And do you admit to those facts, that the  
2 Government could prove those beyond a reasonable doubt?

3                   MS. LINDA LIVOLSI: Yes.

4                   THE COURT: And, Mr. Livolsi, the same question to  
5 you though yours do not reference the tax violation since  
6 that's not pertinent to you but, the statement of facts that  
7 begins at Page 3, Line 23 of your Plea Agreement and continues  
8 over to Page 8, Line 19, have you read those factual  
9 statements?

10                  MR. WILLIAM LIVOLSI, JR.: I have.

11                  THE COURT: And do you agree that the Government  
12 could prove those beyond a reasonable doubt and admit those  
13 facts?

14                  MR. WILLIAM LIVOLSI, JR.: Yes, sir.

15                  THE COURT: Okay. All right.

16                  Go ahead.

17                  MR. DAMM: Thank you, Your Honor.

18                  The next section, Section V, deals with the  
19 collateral use of the factual admission that the defendants  
20 have just made and the Plea Agreement indicates that under  
21 certain circumstances, those admissions can be used against  
22 them.

23                  The next section, Section VI, deals with the  
24 application of the advisory sentencing guidelines and for  
25 Ms. Livolsi, calculates the Wire Fraud Total Offense Level at a

1       Level 22, calculates the fraudulent tax return guideline at a  
2       Total Offense Level of 19, then considers grouping which adds  
3       an additional two levels resulting in a projected advisory  
4       sentencing guideline range for Ms. Livolsi of 51 to 63 months,  
5       realizing, of course, that this is the calculation made by the  
6       parties.

7                     THE COURT: Right.

8                     MR. DAMM: Which may be different than that reached  
9       by Probation and/or this Court.

10                  The -- the calculations for Mr. William Livolsi are a  
11       Total Offense Level of 20 and, of course, no tax guideline  
12       calculation with a projected sentencing guideline range of 33  
13       to 41 months.

14                  The Plea Agreement goes on to discuss the reduction  
15       in the offense level for acceptance of responsibility and it is  
16       the position of the United States at the present time that the  
17       United States will afford the -- both defendants the full  
18       reduction of a 3 point reduction for acceptance of  
19       responsibility. That complies with the 2 points under 3E1.1(a)  
20       and the additional point under 3E1.1(b) .

21                  The Plea Agreement then discusses the fact that the  
22       Court will base the defendants' sentence in part based upon  
23       their criminal record or criminal history.

24                  Section VII of the Plea Agreement discusses the  
25       maximum penalties and advises defendant Linda Livolsi that the

1 maximum penalty for Wire Fraud is a 20-year prison sentence, a  
2 fine of \$250,000, or both; the maximum penalty for filing a  
3 fraudulent false tax return is a 3-year prison sentence and a  
4 fine of \$100,000, or both, and the penalty, likewise, for  
5 Mr. William Livolsi is 20 years and/or a fine of \$250,000.

6                 The Plea Agreement indicates that there will be a  
7 term of supervised release not to exceed 3 years for each  
8 defendant; that the statutory maximum prison sentence for  
9 Ms. Linda Livolsi is 23 years, that's a combination of the  
10 Wire Fraud plus the penalty for the tax evasion; and that there  
11 will be a special assessment of \$100 per count. And the same  
12 is true for Mr. William Livolsi except that the maximum prison  
13 sentence is only 20 years reflecting the Wire Fraud count and  
14 the 100 dollar special assessment.

15                 With respect to the Government's position regarding  
16 sentencing, for both defendants, the United States will be free  
17 to argue for the imposition of any sentence within the  
18 sentencing guidelines range determined by the Court. The  
19 defendant acknowledges that the Court does not have to follow  
20 that recommendation and the Plea Agreement does not require the  
21 United States to file any pre- or post-sentence downward  
22 departure motion under either United States Sentencing  
23 Guidelines, Section 5K1.1 or the Federal Rule of Criminal  
24 Procedure 35. And the United States reserves the right to  
25 defend any lawfully imposed sentence on appeal or in any

1 post-conviction litigation.

2                 The defendants, in both cases, may request a sentence  
3 below the sentencing guidelines range as calculated in this  
4 Plea Agreement and may seek a downward adjustment pursuant to  
5 Title 18 of the United States Code, Section 3553, or United  
6 States Code Sentencing Guideline, Section 4A1.3(b)(1) from any  
7 sentence the Court may impose. The United States, however,  
8 reserves the right to oppose any such request.

9                 With respect to restitution, both defendants agree to  
10 make restitution in the amount of 5,015,000 dollars to the  
11 victim of the wire fraud in this case and additionally,  
12 defendant Linda Livolsi agrees to make restitution to the  
13 Internal Revenue Service in the amount of 1,109,446 dollars,  
14 plus civil interest and penalties as may be calculated and  
15 imposed by the Internal Revenue Service.

16                 We've already discussed the --

17                 THE COURT: Right, you don't need to go back over  
18 that.

19                 MR. DAMM: -- forfeiture.

20                 Section XI of the Plea Agreements talks about the  
21 obligation of the defendants to provide this Court, the  
22 United States, and the Probation Office with accurate and  
23 complete financial information, to submit sworn statements  
24 and/or give depositions under oath concerning their assets and  
25 their ability to pay. The defendants will surrender assets

1 obtained, directly or indirectly, as a result of their crimes  
2 and will release funds and property under their control in  
3 order to pay any fine, forfeiture, or restitution ordered by  
4 the Court.

5 Section XII of the Plea Agreement, again, talks about  
6 the defendants' acknowledgements and waivers. And  
7 specifically, Section XII(B) talks about the defendants' waiver  
8 of their right to appeal and including direct appeal and  
9 post-conviction proceedings. The defendants knowingly and  
10 expressly waive the right to appeal any sentence imposed within  
11 or below the applicable sentencing guideline range as  
12 determined by the Court; the right to appeal the manner in  
13 which the Court determined that sentence on the grounds set  
14 forth in 18, United States Code, Section 3742; and the right to  
15 appeal any other aspect of the conviction or sentence, and any  
16 order of restitution or forfeiture.

17 The defendants also knowingly and expressly waive all  
18 collateral challenges, including any claims under 28, United  
19 States Code, Section 2255 to their conviction, sentence, and  
20 the procedure by which the Court adjudicated guilt and imposed  
21 sentence, except non-waivable claims of ineffective assistance  
22 of counsel. The defendants reserve only the right to appeal  
23 any portion of the sentence which is an upward departure from  
24 the sentencing guidelines range determined by the Court.

25 The defendants acknowledge that the United States is

1 not obligated or required to preserve any evidence obtained in  
2 the investigation of this case.

3 The next section, C, discusses removal and  
4 deportation consequences.

5 THE COURT: Is there an issue as to the citizenship  
6 of either defendant?

7 MR. DAMM: Not that I'm aware of, Your Honor.

8 And, finally, Section XIII indicates that this  
9 Plea Agreement resulted from an arm's length negotiation in  
10 which both parties bargained for and received valuable benefits  
11 in exchange for valuable concessions made by the United States.  
12 Constitutes the entire agreement negotiated and agreed to by  
13 the parties. No promises, agreements, or conditions, other  
14 than those set forth in this agreement, have been made or  
15 implied by the defendant, the defendant's attorney, or the  
16 United States and no additional promise, agreements, or  
17 conditions shall have any force or effect unless set forth in  
18 writing and signed by all parties or confirmed on the record  
19 before this Court.

20 THE COURT: Thank you, Mr. Damm.

21 Ms. Kirtley, do you agree that's an accurate  
22 statement of the Plea Agreement?

23 MS. KIRTLLEY: Yes, Your Honor.

24 THE COURT: And Ms. Livolsi, does that correspond  
25 with your understanding of the Plea Agreement?

1 MS. LINDA LIVOLSI: Yes.

2 THE COURT: And, Mr. Hunterton, same question for  
3 Mr. Livolsi.

4 MR. HUNTERTON: Yes.

5 THE COURT: And Mr. Livolsi, does that correspond  
6 with your understanding of the Plea Agreement?

7 MR. WILLIAM LIVOLSI, JR.: Yes, sir.

8 THE COURT: Now, in accord with the Plea Agreements  
9 that were just read by Mr. Damm, Ms. Livolsi, how do you plead  
10 to the charge in Count Two of Wire Fraud and Count Four, making  
11 a False and Fraudulent Tax Return, guilty or not guilty to  
12 those counts?

13 MS. LINDA LIVOLSI: Guilty.

14 THE COURT: And Mr. Livolsi, as to the Wire Fraud  
15 count in Count Two, how do you plead to that charge, sir?

16 MR. WILLIAM LIVOLSI, JR.: Guilty.

17 THE COURT: I realize the promises in the  
18 Plea Agreement affect your judgment to plead guilty here today,  
19 but except for the promises in the Plea Agreement, has anybody  
20 made any other promises to you or threats to you, or threats  
21 and promises to anyone close to you to force you to plead  
22 guilty here today?

23 Ms. Livolsi?

24 MS. LINDA LIVOLSI: No.

25 THE COURT: And Mr. Livolsi?

1 MR. WILLIAM LIVOLSI, JR.: No.

2 THE COURT: I want to make sure you both understand  
3 as well that by pleading guilty you waive important  
4 constitutional rights. Now, these are discussed in the  
5 Plea Agreement. First, you waive your right to a trial by  
6 jury, set October 21st, at which you would be presumed innocent  
7 and at which you would be represented by your attorneys.

8 Do you understand?

9 MS. LINDA LIVOLSI: Yes.

10 MR. WILLIAM LIVOLSI, JR.: Yes, sir.

11 THE COURT: You're waiving your right at such a trial  
12 to cross-examine any witnesses brought into court to testify  
13 against you as well as your right to bring witnesses into court  
14 to testify on your own behalf at that trial.

15 Do you both understand that?

16 MS. LINDA LIVOLSI: Yes.

17 MR. WILLIAM LIVOLSI, JR.: Yes.

18 THE COURT: Finally, by pleading guilty you waive  
19 your right to remain silent regarding the charges you're  
20 pleading guilty to and you agree to tell me here in open court  
21 what you did but that -- but that otherwise you've admitted in  
22 the factual statements in the Plea Agreement.

23 Do you both understand that?

24 MS. LINDA LIVOLSI: Yes.

25 MR. WILLIAM LIVOLSI, JR.: Yes.

1                   THE COURT: Now, I believe I already asked you,  
2 Ms. Kirtley, and you, Mr. Damm, but I take it you do agree with  
3 the statement of essential elements for the respective counts  
4 of the Indictment; is that correct?

5                   MS. KIRTLEY: That's correct, Your Honor.

6                   THE COURT: And the defendants both acknowledge those  
7 elements.

8                   You will note that there's reference to the  
9 United States Sentencing Guidelines which are employed to try  
10 and establish an appropriate range of sentence. Those  
11 guidelines are advisory, but they are useful and I will consult  
12 them in determining what the appropriate sentence will be in  
13 your case but they're not binding on the Court.

14                  Do you both understand that?

15                  MS. LINDA LIVOLSI: Yes.

16                  MR. WILLIAM LIVOLSI, JR.: Yes.

17                  THE COURT: Something which is binding is the  
18 statutory maximum which was outlined at 20 years maximum prison  
19 sentence as to Count Two as to either of you and an additional  
20 potential 3 years, Ms. Livolsi, as to you on the tax count,  
21 Count Four. In the case of fine, it is up to \$250,000 on  
22 Count Two, \$100,000 on Count Four; and the supervised release  
23 term of 3 years.

24                  You both understand those are the maximum penalties  
25 that could be -- I'm not suggesting those are the penalties,

1       but those are the maximum penalties that could be imposed. You  
2 both understand that?

3                   MR. WILLIAM LIVOLSI, JR.: Yes.

4                   MS. LINDA LIVOLSI: Yes.

5                   THE COURT: The factual statement that is recited in  
6 the -- in both Plea Agreements, which are very similar factual  
7 statements, you've already indicated that you concur in those,  
8 that they're accurate statements. Just summarize for me,  
9 briefly, Ms. Livolsi, in your own words, the essence of the  
10 scheme to defraud in which you were engaged. I draw from the  
11 factual statement that it involved accepting from investors  
12 investments of money which were to be in -- placed in  
13 investment by you but instead the funds were converted to your  
14 own personal use.

15                  Is that accurate?

16                  MS. LINDA LIVOLSI: Yes.

17                  THE COURT: And did you know at the time that you  
18 were receiving those funds that they were being given to you  
19 based upon false promises or representations that you had made  
20 to the investors to give you the money?

21                  MS. LINDA LIVOLSI: Yes.

22                  THE COURT: All right.

23                  And, Mr. Livolsi, same questions for you, were you  
24 engaged in that same scheme?

25                  MR. WILLIAM LIVOLSI, JR.: Yes, I was.

1                   THE COURT: And, same types -- not was the same  
2 statements, but similar type statements that you made to induce  
3 others to part with money?

4                   MR. HUNTERTON: Your Honor -- Your Honor, if I might,  
5 I'm sorry for the interruption, but the -- the Plea Agreement  
6 has very clear delineations about what Mr. Livolsi was involved  
7 in --

8                   THE COURT: Right.

9                   MR. HUNTERTON: -- and what he wasn't.

10                  THE COURT: Yeah.

11                  MR. HUNTERTON: And he was not involved in the  
12 solicitation or representation to the investors.

13                  THE COURT: You're right. You're right.

14                  The Plea Agreement factual recitations does not say  
15 that.

16                  Go ahead, Mr. Livolsi, tell me what your role was  
17 then in the -- in the scheme. What -- what did you do to help  
18 carry the scheme out if you weren't the person out there making  
19 false representations?

20                  MR. WILLIAM LIVOLSI, JR.: Umm, I was responsible for  
21 moving cash and funds into bank accounts.

22                  THE COURT: Okay.

23                  MR. WILLIAM LIVOLSI, JR.: And, helping to pay off  
24 prior investors.

25                  THE COURT: And did you understand that the monies

1 that you were moving and opening of these accounts were monies  
2 that were derived from false representations by others,  
3 including Ms. Livolsi, to investors?

4 MR. WILLIAM LIVOLSI, JR.: One -- may I speak with my  
5 attorney --

6 THE COURT: Yeah.

7 MR. WILLIAM LIVOLSI, JR.: -- for a second, please?

8 (Discussion between Mr. William Livolsi, Jr. and  
9 counsel.)

10 MR. WILLIAM LIVOLSI, JR.: I understand that now,  
11 Your Honor, given the facts.

12 THE COURT: At the time you were engaged in the  
13 conduct did you understand that the monies were a product of  
14 fraud, false representations of some kind?

15 MR. WILLIAM LIVOLSI, JR.: I didn't understand that  
16 at the time but I do understand it now and that I recognize  
17 that that was inappropriate and it was wrong.

18 THE COURT: All right. Mr. Damm, would that be  
19 sufficient under the -- you prepared the factual statement. Is  
20 that consistent with the factual statement?

21 MR. DAMM: It is not, Your Honor.

22 In order for there to be a factual basis for  
23 Mr. Livolsi, he would have needed to understand, at the time he  
24 engaged in this conduct, that it was illegal. It's really kind  
25 of irrelevant whether or not he understands it now, it's --

1                   THE COURT: Right.

2                   MR. DAMM: -- it's what did he understand at the time  
3 that he engaged in the conduct.

4                   THE COURT: Well, I agree. There's nothing else  
5 about the case then that comes into play here, that's -- that's  
6 the up or down -- well, what about that, Mr. Hunterton, if he  
7 doesn't know at the time that the allegedly illegal conduct is  
8 occurring that it's part of a scheme to defraud or in  
9 furtherance of a scheme to defraud --

10                  MR. HUNTERTON: I think his statement's sufficient,  
11 Your Honor. There's nothing in the Plea Agreement, written  
12 Plea Agreement, that says he knew and, I thought Mr. Damm did a  
13 very good job crafting that. However, it does say, at Page 4,  
14 Line 20 and at other places, that he opened a bank account in  
15 his name with Mrs. Livolsi; he, as he has already said here in  
16 open court, moved the money and used it to pay prior investors  
17 and I believe that is sufficient, certainly under the principle  
18 of the 18, U.S., Section 2 to support the guilty plea, but,  
19 Mr. Livolsi's trying to be honest here with the Court about  
20 what he knew at the time which was different than what he  
21 understands now that myself and Bert Goodrich have been able to  
22 go through the evidence and demonstrate what was actually going  
23 on.

24                  THE COURT: Well, no, I understand what he knows now  
25 is -- is what's set out in -- essentially in the Plea Agreement

1 and that the funds were the product of false pretenses and  
2 fraud, at least by Mrs. Livolsi, but there is the requirement  
3 that defendant acts with the intent to defraud, that is, the  
4 intent to deceive or cheat, and aiding and abetting -- I don't  
5 know if I've got my . . .

6 I mean, if your client thought everything he was  
7 doing was perfectly legal and had no clue that he was involved  
8 in -- participated in anything illegal . . .

9 Under 18, U.S. Code, Section 2, the Government would  
10 have to prove, to secure a conviction on the Wire Fraud under  
11 aiding and abetting, first, the underlying wire fraud was  
12 committed by someone -- that's really not in dispute,  
13 Ms. Livolsi did that -- second, the defendant knowingly and  
14 intentionally aided, counseled, commanded, induced, or procured  
15 that person to commit each element of the crime; and third, the  
16 defendant acted before the crime was completed. It's not  
17 enough that defendant merely associated with the person  
18 committing the crime or unknowingly or unintentionally did  
19 things that were helpful, or was present at the scene of the  
20 crime. The evidence must show the defendant acted with the  
21 knowledge and intention of helping that person commit the  
22 crime.

23 The way I understand that, it requires that  
24 Mr. Livolsi, even though he's not the percipient or he's not  
25 the firsthand actor when he's engaged at some point in these

1 transfer of monies, these payment of individuals, that he  
2 understands he is being of assistance to Ms. Livolsi in her  
3 carrying out the scheme to defraud, which she apparently  
4 devised and in which she was engaged. So that's really the nub  
5 of the matter. And, do I understand you had absolutely no  
6 clue, you did not understand that? You did not have knowledge  
7 of that and you were -- were, in essence, acting innocently the  
8 entire time?

9 Mr. Damm.

10 MR. DAMM: Your Honor, I think if we maybe focus on  
11 Page 7 of Mr. Livolsi's Plea Agreement, maybe we can put a  
12 little finer point on this issue. At Line 14 it indicates that  
13 on February 15th, 2007, William Livolsi was present during the  
14 testimony of Linda Livolsi during a hearing related to a  
15 lawsuit filed against her by one of the investors in which the  
16 judgment obtained against Linda Livolsi on behalf of another  
17 investor was mentioned. The Government's intention -- the  
18 Government's belief is that Mr. Livolsi, at least by that point  
19 in time, if not much, much earlier, knew that his wife was  
20 engaged in fraudulent conduct by soliciting money from  
21 investors and not investing that money, to the extent that she  
22 was actually sued in state court here in Las Vegas, in  
23 Clark County.

24 THE COURT: Yeah.

25 MR. DAMM: And after that, Mr. Livolsi opened up a

1 bank account on May 3rd, 2007, with the Bank of Oklahoma. On  
2 November 9th he and the defendant jointly opened a bank account  
3 with Wachovia Bank under the name of RGM Enterprises, LLC.  
4 Now, this is the fraudulent entity that Mrs. Livolsi used to  
5 induce investors to part with their money. So, here we have  
6 the active participation in November of 2007 of Mr. Livolsi and  
7 his wife opening a bank account in the name of this entity.  
8 Less than a month later, Mrs. Livolsi was able to fraudulently  
9 induce another investor to part with over 5 million dollars by  
10 claiming that she would invest that money into a hedge fund.  
11 Two days after that, and this is at Page 8 of the facts,  
12 Mr. Livolsi received a wire transfer in the amount of 3.5  
13 million dollars and he immediately wired funds to individuals  
14 previously defrauded by Ms. Livolsi and for which they had to  
15 pay judgments.

16 THE COURT: Yeah.

17 MR. DAMM: So, he was the conduit for taking money  
18 from the last investor, the 5 million dollar fraud --

19 THE COURT: Yeah, I understand the circumstances and  
20 it's laid out in the --

21 MR. DAMM: And I -- I guess I'm a little mystified by  
22 his claim now that he didn't know that any of that conduct --

23 THE COURT: That's -- that's the bottom line  
24 question.

25 MR. DAMM: -- was illegal.

1                   THE COURT: Mr. Livolsi, throughout all that's just  
2 been recited, all these events, are you saying that you did not  
3 know at some point during the ongoing scheme -- I'm not talking  
4 about being at the origination of it or participating in false  
5 representations, but that what you had been doing and what you  
6 then were doing was knowingly done to assist in the carrying  
7 out of the fraudulent scheme?

8                   MR. WILLIAM LIVOLSI, JR.: I assisted.

9                   THE COURT: You did?

10                  MR. WILLIAM LIVOLSI, JR.: I did.

11                  THE COURT: All right. You understood that.

12                  MR. WILLIAM LIVOLSI, JR.: Yes, I understand that.

13                  THE COURT: All right.

14                  All right. The Court will receive the pleas of both  
15 defendants and will set the matter for sentencing for . . .  
16 I've lost the sheet so you'll have to remind me, Miss Clerk. I  
17 think it -- oh, February 18th at -- 2015, at 9:00 a.m. for both  
18 defendants, we'll set them at the same time, 9 o'clock a.m.,  
19 and take them one after the other.

20                  The matter will be referred to the Probation  
21 Department to prepare a Pre-Sentence Report.

22                  The trial date will be vacated.

23                  The pending motions will all be denied as moot in  
24 light of the pleas that have been entered, Miss Clerk, and the  
25 Order Certifying Facts in order to show cause, Document 173,

1       that hearing will also be vacated, again, as mooted and there  
2       will be no further proceedings on the Order to Show Cause.

3               I think that cleans up everything on the docket.

4               Both defendants will continue on the condition --  
5       conditions previously set by the Court with the assistance of  
6       the Department of Pretrial Services.

7               Is there anything else on behalf of any of the  
8       parties at this point then?

9               MR. DAMM: Your Honor, on behalf of the  
10      United States, nothing further. I'd just like to thank defense  
11      counsel and the defendants for resolving what has been --

12               THE COURT: It's been a difficult, hard fought case  
13      for a long time, and a lot of illness along the way.

14               And Ms. Kirtley, anything further, or Mr. Hunterton?

15               MS. KIRTELEY: No, Your Honor, thank you.

16               MR. HUNTERTON: No. Thanks, Judge.

17               THE COURT: All right. Thank you all then.

18      Obviously you'll need to make arrangements with the Department  
19      of Probation for the Pre-Sentence Investigation.

20               MS. KIRTELEY: Yes, Your Honor.

21               THE COURT: All right. Thank you.

22               COURTROOM ADMINISTRATOR: All rise.

23               Court's adjourned.

24               (Proceedings adjourned at 11:29:41 a.m.)

25

1

\* \* \*

2 I, Heather K. Newman, court-approved transcriber, certify that  
3 the foregoing is a correct transcript transcribed from the  
4 official electronic sound recording of the proceedings in the  
5 above-entitled matter.

6

7

8 /s/ Heather K. Newman  
Heather K. Newman

3-30-2015  
Date

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25